

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-316-C - ORDER NO. 2005-105
MARCH 4, 2005

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| IN RE: | Petition of BellSouth Telecommunications, |) | ORDER SETTING ORAL |
| | Inc. to Establish Generic Docket to Consider |) | ARGUMENTS ON |
| | Amendments to Interconnection Agreements |) | EMERGENCY PETITION |
| | Resulting from Changes of Law. |) | |

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Emergency Relief filed by NuVox Communications, Inc., Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, Xspedius Management Co. of Spartanburg, LLC, KMC Telecom III, LLC, and KMC Telecom V, Inc. (collectively known as the Joint Petitioners). The Joint Petitioners, which are competitive local exchange carriers (CLECs), request that the Commission issue an Emergency Declaratory Ruling finding that BellSouth Telecommunications, Inc. (BellSouth) may not unilaterally amend or breach its existing interconnection agreements with the Joint Petitioners or the Abeyance Agreement entered into by and between BellSouth and the Joint Petitioners. The Joint Petitioners bring the instant matter before the Commission in light of BellSouth's February 11, 2005 Carrier Notification and February 25, 2005 Revised Carrier Notification stating that certain provisions of the Federal Communications Commission's (FCC's) *Triennial Review*

Remand Order (TRRO) regarding new orders for de-listed Unbundled Network Elements (new adds) are self-effectuating as of March 11, 2005.

The Joint Petitioners allege that BellSouth's pronouncement is based on a fundamental misreading of the TRRO. The Joint Petitioners state a belief that the provisions of the TRRO are not self-effectuating, but are changes that must be incorporated into interconnection agreements prior to being effectuated.

It appears to this Commission that there is a fundamental disagreement between the Joint Petitioners and BellSouth as to how the provisions of the TRRO are to be effectuated, and the effect of the Abeyance Agreement. We believe that these are questions of law, rather than a factual dispute. Accordingly, this Commission believes that the matters raised by the Emergency Petition are appropriate for oral argument by all parties. Since BellSouth believes that the provisions of the TRRO are self-effectuating on March 11, 2005, we believe that such argument should be held as soon as possible before that date. Further, we believe that proposed orders, either alone or accompanied by briefs, would be helpful for the Commission and the Commission Advisory Staff if received prior to the oral arguments. Therefore, we make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A Joint Petition has been filed by a number of CLECs which requests that this Commission issue an Emergency Declaratory Ruling finding that BellSouth may not unilaterally amend or breach its existing interconnection agreements with the Joint Petitioners or the Abeyance Agreement entered into by and between BellSouth and the Joint Petitioners.

2. The Joint Petition was filed in light of two Carrier Notifications filed by BellSouth.

3. There is a fundamental disagreement between the Joint Petitioners and BellSouth as to whether or not the provisions of the Federal Communications Commission's *Triennial Review Remand Order* are self-effectuating as of March 11, 2005, or whether the provisions of this Order must be incorporated into interconnection agreements prior to being effectuated.

4. This question is a matter of law that would lend itself to oral arguments before this Commission, which should be held as soon as possible before March 11, 2005. Further, proposed orders, either alone or accompanied by briefs, would be helpful, especially if received prior to the oral arguments.

ORDER

It is therefore ordered that oral arguments on these matters will be held before the Commission on Thursday, March 10, 2005, at 10:00 AM in the offices of the Commission. Proposed Orders may be filed, either alone or accompanied by briefs, by the close of business on Tuesday, March 8, 2005. These documents must be filed in

written and electronic (e-mail) form. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)